



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No.

CHARLES E. SMITH, Appellant,

Defens

KANSAS CITY TITLE & TRUST COMPANY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.

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TRANSCRIPT OF RECORD

PLEAS held in the Western Division of the Western District of Missouri, at a regular term of said Court begun and held on the 30th day of October, 1919, at Kansas City, Mo.

Present; Hon. ARBA S. VANVALKENBURGH, District Judge.

BE IT REMEMBERED, That heretofore, to-wit, on July 21, 1919, came the plaintiff, by Frank Hagerman, Esq., and William Marshall Bullitt, Esq., and filed in our Clerk's office of the said court his bill in equity, which reads and is as follows, to-wit:

IN THE

District Court of the United States FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, AT KANSAS CITY.

CHARLES E. SMITH, - - - - - Plaintiff,
vs. No. Bill in Equity (as amended).

KANSAS CITY TITLE & TRUST COMPANY, - Defendant,

*To the Honorable, the Judges of the District Court of
the United States for the Western Division of
the Western District of Missouri, at Kansas
City:*

The plaintiff, CHARLES E. SMITH, states as follows, to-wit:

(1) **CHARLES E. SMITH** (hereinafter called **SMITH**) is a citizen of the State of Missouri and a resident of Kansas City in that state.

THE KANSAS CITY TITLE & TRUST COMPANY (hereinafter called the **TRUST COMPANY**) is a corporation, created, organized and existing under the laws of the State of Missouri (excerpted in the margin*) and it is a citizen of that state with its residence, *i. e.*, its principal place of business, at Kansas City, Missouri, whereof it is an inhabitant; it has \$750,000 paid up capital stock consisting of 7,500 shares of the par value of \$100; and it is engaged in the business of acting, *inter alia*, as agent, executor, administrator, guardian, curator, trustee and generally in fiduciary capacities.

This is a suit of a civil nature, in equity, and it arises under the Constitution and laws of the United States; and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.

*An Act of the Legislature of Missouri, approved March 25, 1915, entitled:

"An Act to repeal articles I, II and III of chapter 12 of the Revised Statutes of 1909 relating respectively to 'state banking department,' 'banks of deposit and discount,' and 'trust companies,' and to repeal also the following three acts relating to the same subjects, and being all the amendments made to said articles since 1909, nowit:

1. Section 1090, page 91, of the session acts of 1911;
2. Section 1096, page 104, of the session acts of 1911;
3. Section 1074, page 111, of the session acts of 1913, and to enact in lieu of all thereof new articles entitled respectively, 'state banking department,' 'banks' and 'trust companies,' to be designated respectively as articles I, II and III of said chapter 12, with an emergency clause." (Laws of Mo. 1915, pp. 165-185.)

(2) Congress has passed two Farm Loan Acts, to-wit:

First, an Act approved July 17, 1916 (39 Stat. L. 360) entitled:

"AN ACT to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositories and financial agents for the United States, and for other purposes."

Second, an Act approved January 18, 1918, entitled:

"AN ACT amending section 32 Federal Farm Loan Act approved July 17, 1916."

Under the provisions of these acts, there have been organized in the United States two different kinds of Federal corporations, to-wit:

- 12 Federal Land Banks.
- 21 Joint Stock Land Banks.

The United States has been divided, under said acts, into 12 Federal Land Bank districts, in each of which one Federal Land Bank has been organized; and in eight of the districts 21 Joint Stock Land Banks have been organized.

Federal Land Banks. Each Federal Land Bank has taken from the owners of farm lands situated in its district a large amount of mortgage notes secured by mortgages on such lands; has loaned the amount thereof to the respective borrowers payable

in installments extending over 36 years; and after depositing such mortgages and notes with the Farm Land Registrar of the district, it has executed and issued an equivalent amount of its own "collateral trust" obligations, called Farm Loan Bonds (which are secured by the said deposit of an equivalent amount of such farm mortgages and notes as collateral) in denominations of \$25, \$50, \$100, \$500, and \$1,000, and due and payable by the Federal Land Bank to bearer in 20 years from the date thereof; and each of said Federal Land Banks has sold, and is continuing to offer for sale, large amounts of said Farm Loan Bonds to investors and on the bond markets of this country.

Section 26 of said Act of Congress, approved July 17, 1916, provides:

"First mortgages executed to Federal Land Banks, or to Joint Stock Land Banks, and Farm Loan Bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they, and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation."

Section 21 provides:

"Every farm loan bond issued * * * shall contain in the face thereof a certificate * * * that it is not taxable by National, State, municipal or local authority."

The said Farm Loan Bonds are being widely advertised by the Federal Land Banks, by the Farm

Loan Board and by the purchasers thereof as completely exempt from all Federal, State, Municipal and Local taxation, which includes *inter alia*, the Federal income excess profits and inheritance taxes, the State inheritance and *ad valorem* taxes and all City, County, and local *ad valorem* taxes; and the owners of such Farm Loan Bonds do not report them, or the income therefrom, for assessment for taxation of any kind by the Federal, State, municipal or local governments.

Joint Stock Land Banks. Under the provisions of the said Acts, numerous private persons have organized, in various parts of the United States, twenty-one Joint Stock Land Banks, the entire capital stock of which was subscribed for, and is, and always has been, wholly owned by such private persons, who are operating and will operate such Joint Stock Land Banks purely and exclusively for their own individual and private profit as in the case of any other purely private corporation.

The names, locations and amounts of capital stock of such Joint Stock Land Banks, as of June 30, 1919, are as follows, to-wit:

NAMES.	Chartered.	Operates In	Paid in Capital
1. Iowa, Sioux City, Iowa.....	Apr. 27, 1917	Iowa & S. D.	\$250,000
2. Virginia, Charleston, W. Va.	May 7, 1917	Ohio & W. Va.	250,000
3. Fletcher, Indianapolis, Ind.	June 28, 1917	Ind. & Ill.	250,000
4. First, Chicago, Ill.....	July 25, 1917	Iowa & Ill.	800,000
5. Liberty, Salina, Kansas.....	Jan. 9, 1918	Mo. & Kansas	425,000
6. Mississippi, Memphis, Tenn.	June 22, 1918	Miss. & Tenn.	250,000
7. Arkansas, Memphis, Tenn.....	June 22, 1918	Ark. & Tenn.	250,000
8. Lincoln, Lincoln, Neb.....	July 12, 1918	Iowa & Neb.	430,000
9. Bankers', Milwaukee, Wis.....	Sept. 6, 1918	Minn. & Wis.	250,000
10. First, Fort Wayne, Ind.....	Dec. 20, 1918	Ind. & Ohio	250,000
11. First, Minneapolis, Minn.....	Jan. 14, 1919	Minn. & Iowa	250,000
12. Illinois, Monticello, Ill.....	Jan. 24, 1919	Iowa & Ill.	250,000
13. Montana, Helena, Montana	Apr. 15, 1919	Montana & Idaho	250,000
14. Fremont, Fremont, Nebr.....	Apr. 17, 1919	Iowa & Nebr.	125,000
15. Des Moines, Des Moines, Iowa.....	Apr. 22, 1917	Iowa & Minn.	125,000
16. First Texas, Houston, Texas	Apr. 23, 1919	Texas & Okla.	125,000
17. Terra, Omaha, Nebr.....	May 8, 1919	Iowa & Nebr.	153,000
18. Colonial, Norfolk, Va.....	May 12, 1919	Va. & N. C.	125,000
19. Central, Iowa, Des Moines, Iowa.....	May 15, 1919	Iowa & Minn.	125,000
20. Virginia-Carolina, Norfolk, Va.....	June 11, 1919	N. C. & Va.	125,000
21. Southern Minnesota, Redwood Falls, Minn.....	June 25, 1919	Minn. & S. D.	250,000

A large number of persons desiring to borrow money from such Joint Stock Land Banks upon the security of farm lands in their respective territories, have executed, and are about to execute, their mortgage notes and mortgages to secure the same, on farm lands to each of such Joint Stock Land Banks; and each of such Joint Stock Land Banks that has actually begun to operate, has deposited the notes and mortgages with the Farm Loan Registrar of its respective district, and has thereupon executed and issued an equivalent amount of its own collateral trust obligations, which are also called Farm Loan Bonds, and which are secured by the said de-

posit of such equivalent amount of said notes and mortgages as collateral.

Each of the said Joint Stock Land Banks so operating, has sold, and is continuing to offer for sale, large amounts of the said Farm Loan Bonds so issued by it to investors and on the bond markets of this country.

Section 26 of the said Act of Congress, approved July 17, 1916, provides:

"First mortgages executed to Federal Land Banks, or to Joint Stock Land Banks, and Farm Loan Bonds issued under the provision of this act, shall be deemed and held to be instrumentalities of the Government of the United States and as such they, and the income derived therefrom, shall be exempt from Federal, State, Municipal and local taxation."

Section 21 provides:

"Every farm loan bond issued . . . shall contain in the face thereof a certificate . . . that it is not taxable by National, State municipal or local authority."

The said Farm Loan Bonds so issued by the Joint Stock Land Banks, are being widely advertised by the said Banks and by the purchasers thereof as completely exempt from all Federal, State, Municipal and local taxation, which includes *inter alia* Federal income, excess profits and inheritance taxes, the State income, inheritance and *ad valorem* taxes and City and County and local *ad valorem* taxes; and the owners thereof do not report them for assessment for

taxation of any kind by the Federal, State or municipal governments.

Pursuant to the provisions of Section 32 as amended by the Act of January 18, 1918, of the Federal Farm Loan Act, the Secretary of the Treasury has made certain deposits for the temporary use of Federal Land Banks out of moneys in the Treasury not otherwise appropriated, a statement whereof is as follows, viz.:

Federal Land Bank of	DEPOSITS Date	Amount.	REPAYMENTS. Date.	Amount.
Springfield, Mass.	Nov. 16, 1918	\$500,000	Aug. 27, 1919	\$ 500,000
Louisville, Ky.	" 2, 1917	250,000		
	" 16, 1917	250,000	Nov. 31, 1917	500,000
	Jan. 8, 1918	250,000	May 1, 1918	250,000
New Orleans, La.	Jan. 19, 1918	250,000	May 1, 1918	250,000
St. Paul, Minn.	Nov. 22, 1917	430,000		
	Jan. 8, 1918	250,000	Dec. 22, 1917	430,000
	Jan. 16, 1918	250,000		
	" 18, 1918	160,000	May 1, 1918	660,000
Wichita, Kansas	July 3, 1917	250,000		
	" 24, 1917	250,000	July 26, 1917	500,000
	Dec. 8, 1917	250,000		
	" 11, 1917	250,000		
	" 19, 1917	250,000		
	" 24, 1917	500,000		
	Jan. 9, 1918	210,000		
	" 12, 1918	250,000		
	" 16, 1918	250,000	May 1, 1918	1,960,000
Houston, Texas	Jan. 5, 1918	500,000		
	" 17, 1918	200,000	May 1, 1918	700,000
	July 2, 1918	400,000	Nov. 26, 1918	70,000
			May 8, 1919	330,000
Berkeley, Calif.	Jan. 16, 1918	250,000	May 1, 1918	250,000
Spokane, Wash.	July 24, 1917	250,000		
	Dec. 24, 1917	500,000	July 27, 1917	250,000
	Jan. 11, 1918	250,000		
	Jan. 16, 1918	250,000	May 1, 1918	1,500,000

For which the respective Banks issued their respective certificates of indebtedness at 2% interest per annum.

The Federal Land Banks were the owners on September 30, 1919, of United States Bonds of a par amount of \$4,230,805, and the Joint Stock Land Banks were the owners on August 31, 1919, of United States Bonds of a par amount of \$3,287,503.

Pursuant to the provisions of Section 5 of said Act, the Secretary of the Treasury has invested in the capital stock of said Federal Land Banks, public funds amounting to \$8,892,130 and on July 1, 1919, said Secretary was the holder on behalf of the United States of \$8,265,809, par amount of said capital stock.

Pursuant to the provisions of Section 32 of said Act as amended, the Secretary of the Treasury has purchased Farm Loan Bonds issued by said Federal Land Banks of a par amount of \$149,775,000, of which a par amount of \$136,885,000, was still held in the Treasury of the United States on July 1, 1919.

Up to September 30, 1919, bonds have been issued under the Act by the Federal Land Banks to the amount of \$285,600,000, of which about \$135,000,000 are held in the Treasury of the United States, under the Amendment of January 18, 1918.

Up to September 30, 1919, 27 Joint Stock Land Banks have been incorporated under the Act, having an aggregate capital of \$8,000,000, all of which has been subscribed and \$7,450,000 paid in; which banks have issued under the provisions of the Act and sold

and there are now outstanding in the hands of the public, bonds to the amount of \$41,000,000.

The Secretary of the Treasury, up to the present time, has not designated any of the Federal Land Banks nor the Joint Stock Land Banks as depositaries of public money, nor except as hereinafter stated, employed them or any of them as financial agents of the Government nor have they or any of them performed any duties as depositaries of public money or as financial agents of the Government, nor have they or any of them accepted any deposits or engaged in any banking business.

During the summer of 1918, the Federal Land Banks at Wichita, St. Paul and Spokane were designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President having at the request of the Secretary of Agriculture set aside \$5,000,000 for that purpose out of his \$100,000,000 war funds. The three banks mentioned have made upwards of 15,000 loans of said character aggregating in all the sum of upwards of \$4,500,000, and are now engaged in collecting said loans, all of which were secured by crop liens. The said banks acted in said matter without compensation under the provisions of a joint circular of the Treasury Department and the Department of Agriculture allowing the actual expenses of the several Federal Land Banks, but no compensation.

(3) Section 27 of the said Act of Congress, approved July 17, 1916, provides:

"That farm loan bonds issued under the provisions of this Act by Federal land banks or joint stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits."

Under the laws of Missouri governing its incorporation, the defendant TRUST COMPANY can with corporate, fiduciary and trust funds, large amounts of which it has on hand, buy, invest in and sell all kinds of Government, State, Municipal and other bonds, and all kinds of negotiable and non-negotiable paper, stocks and other investment securities, but it can not buy, invest in or sell any such bonds, papers, stocks or securities which are not authorized to be issued by a valid law or which are not investment securities.

The TRUST COMPANY, against the will and consent of the plaintiff, intends, threatens and proposes to, and will, if not restrained herein, take from its said corporate and fiduciary funds, in which its stockholders and *cestuis que trust* are directly interested, large sums of money, and invest the same at par and accrued interest in

(a) \$10,000 par value of Farm Loan Bonds, issued by Federal Land Banks; and

(b) \$10,000 par value of Farm Loan Bonds issued by Joint Stock Land Banks.

The TRUST COMPANY has been induced to direct its officers to make the said investment by reason of its reliance upon the provisions of the said Farm Loan Acts, and especially sections 21, 26 and 27 thereof above quoted, by which the said Farm Loan Bonds, whether issued by the Federal Land Banks or by the Joint Stock Land Banks, are declared to be instrumentalities of the Government of the United States, and as such, they and the income derived therefrom, are declared to be exempt from Federal, State, Municipal and local taxation, and are further declared to be lawful investments for all fiduciary and trust funds.

The Farm Loan Bonds above described, in which the TRUST COMPANY proposes to invest its corporate and fiduciary funds, have no legal existence and no right to be issued except by and under the Acts of Congress approved July 17, 1916, and January 18, 1917, respectively.

Neither such bonds issued by the Federal Land Banks nor those issued by the Joint Stock Land Banks are of any validity, because no valid law authorizes their issue and they are not, because invalid and without authority for their issue, proper securities for the investment of corporate or trust funds; and therefore, the TRUST COMPANY is not entitled to invest its funds therein.

Each section of each of said Acts of Congress, and particularly each of Sections 21, 26 and 27 of the Act approved July 17, 1916, is illegal, void and un-

constitutional, because not authorized by the Constitution of the United States nor by any of the Amendments thereto, and because contrary to and in violation of Article X of the Amendments to the Constitution of the United States, which provides that

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

No power to provide for

(a) The organization, by private individuals for private profit, of private corporations, with power to issue the obligations of such private corporations and/or the exemption of the obligations of such private corporations, and the income derivable therefrom, from the taxing power of the Federal Government or of the States or the municipal subdivisions thereof;

(b) The organization of corporations to provide capital for agricultural development, and/or to loan money to farmers or prospective farmers, at lower rates of interest than the market rate and/or the exemption of the obligations of such corporations, or the income derivable therefrom, from the taxing power of the Federal or State Governments or the municipal subdivisions thereof; and/or

(c) The organization of such corporations as the Federal Land Banks or the Joint Stock Land Banks, or the issuance of the obligations thereof, or the exemption therefrom from taxation,

has ever been delegated to the United States by the Constitution nor prohibited by it to the States, but all

such powers have been reserved to the States, respectively, or to the people.

The TRUST COMPANY claims that all of the provisions of the said two Acts of Congress, approved, respectively, July 17, 1916, and January 18, 1918, are valid and enforceable; that the provision therein providing for the exemption of all bonds, and the income derivable therefrom, issued by the Federal Land Banks and/or by the Joint Stock Land Banks, from all forms of taxation, is constitutional; and that the said bonds, and the income therefrom, are exempt from all forms of Federal, State or Municipal taxation; and the TRUST COMPANY proposes and intends to purchase said bonds solely because of its belief (a) in the validity of said bonds, and especially (b) in the exemption thereof from all forms of taxation; and it would not buy the bonds except for the tax exemption feature.

If the said exemption from taxation in Section 26 and/or if the provision of Section 27 authorizing the investment of fiduciary or trust funds in such bonds is not valid, then the Farm Loan Bonds issued by the Federal Land Banks and/or the Joint Stock Land Banks are not investment securities, are of doubtful value, and the bonds and the income therefrom are subject to taxation by the United States, the States and the local subdivisions thereof.

(4) The plaintiff, SMITH, is, and was at all the times herein mentioned and for a long time theretofore, the owner of 618 shares of the capital stock of

the defendant TRUST COMPANY of the par value of \$61,800., having a market value of that amount.

This suit is not founded on rights which may properly be asserted by the defendant TRUST COMPANY and is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

When the Board of Directors of the TRUST COMPANY indicated an intention to make an investment in said Farm Loan Bonds, the plaintiff SMITH objected to such investment and gave as his reason his belief that the Acts of Congress, under which said bonds were issued, were unconstitutional; that the exemption therein given of the said bonds from taxation was invalid; and that when purchased, said bonds and the income therefrom would be held to be subject to taxation by the Federal, State and Municipal Governments or some or all of them. But the Board of Directors disregarded the plaintiff's objections and decided to make the investment at one of its regular meetings, and on May 13, 1919, adopted the following resolution, against which the plaintiff, as one of the members of the Board of Directors, cast his vote, to-wit:

"WHEREAS, there is a difference of opinion among the stockholders as to whether this Company should or can take over or invest in Federal Land Bank Bonds and Joint Stock Land Bonds issued under the Federal Farm Loan Acts of July 17, 1916, and January, 1918; and

WHEREAS, this Company believes the securities to be valid and the provisions of said laws to be constitutional and valid;

BE IT RESOLVED:

1. The officers of this Company are hereby authorized and directed to invest in and purchase Federal Land Bank Bonds in an amount not to exceed Ten Thousand (\$10,000.00) Dollars, and Joint Stock Land Bank Bonds in an amount not to exceed Ten Thousand (\$10,000.00) Dollars.
2. In case of any investment hereunder and a contest of the right so to make it, this Company shall defend such suit, and may permit the officers of the Government to take charge of the defense or request it to appear *amicus curiae*, to the end that the validity of the bonds may be fully sustained."

As the Board of Directors of the TRUST COMPANY is the managing body, having authority by law to invest its corporate and fiduciary funds, there was no other effort which the plaintiff could make to prevent such investment, and the reason that he failed to prevent the determination to make the investment was that a majority of the Board of Directors believed that the bonds were valid and that the tax exemption feature thereof was lawful.

(5) The TRUST COMPANY has recently been negotiating for the purchase of such Farm Loan Bonds, \$10,000 par value issued by Federal Land Banks, and \$10,000 par value issued by Joint Stock Land Banks, and is just about to consummate the purchase thereof and to pay the purchase price therefor in excess of par, and will do so unless restrained by an injunction.

The plaintiff has no adequate remedy at law, and both he and the TRUST COMPANY will be damaged in a large sum if the unlawful investments aforesaid are permitted to be made.

WHEREFORE, the plaintiff, CHARLES E. SMITH prays

1. That the defendant KANSAS CITY TITLE & TRUST COMPANY, its officers, agents and employes be perpetually restrained and enjoined from investing any of its funds, corporate or fiduciary, in any of the Farm Loan Bonds issued by any of the Federal Land Banks or by any of the Joint Stock Land Banks;
2. That the Act of Congress approved July 17, 1916, and especially Sections 26 and 27 thereof, be adjudged and decreed to be unconstitutional, void and of no effect; and that the issuance of Farm Loan Bonds by the Federal Land Banks thereunder be adjudged and decreed to be illegal and unauthorized and that the tax exemption feature thereof be adjudged and decreed to be invalid;
3. That the Act of Congress approved July 17, 1916, and especially Section 16 thereof, authorizing the organization of Joint Stock Land Banks, and Section 26 thereof exempting from Federal, State, Municipal and local taxation the bonds issued by said Joint Stock Land Banks be adjudged and decreed to be unconstitutional, void, and of no effect; and that the issuance of Farm Loan Bonds by such Joint

Stock Land Banks thereunder be adjudged and decreed to be illegal and unauthorized.

4. For his costs herein expended and all legal, equitable and proper relief, as to justice and equity may seem proper.

MAY IT PLEASE YOUR HONORS to grant unto the plaintiff a writ of subpoena, to be directed to the said KANSAS CITY TITLE & TRUST CO., the defendant hereinbefore named, commanding and requiring it to appear herein and answer, but not under oath, answer under oath being hereby expressly waived, the several allegations in this petition contained.

WM. MARSHALL BULLITT,

FRANK HAGEMAN,

Counsel for Plaintiff.

State of Missouri, } ss.:
County of Jackson,

The plaintiff, CHARLES E. SMITH, being first duly sworn, deposes and says that he is the plaintiff herein, that he has read the foregoing petition in equity, and that the statements therein contained are true.

CHARLES E. SMITH.

Subscribed and sworn to before me by Charles E. Smith, this 19 day of July, 1919.

MAY LEE,
Notary Public in and for the County of
Jackson, State of Missouri.

My commission expires January 10, 1921.

At a Court held October 16, 1919:

This cause coming on to be heard on the petition of First Joint Stock Land Bank, of Chicago, Illinois, intervenor in this suit, to be made a party defendant herein, in behalf of itself and of the Joint Stock Land Banks enumerated in paragraph (2) of the bill of complaint herein, and on the annexed consent of the original parties to said suit, and it appearing to the Court that said First Joint Stock Land Bank of Chicago, Illinois, has an interest in said suit with respect to which it is entitled to be heard before this Court,

It is therefore ordered, adjudged and decreed that the First Joint Stock Land Bank, of Chicago, Illinois, has leave to intervene in said suit in behalf of itself and of the Joint Stock Land Banks enumerated in paragraph (2) of the bill of complaint herein, and to that end may appear in said suit within ten days from the date of this order in the same manner and with like effect as if named in the original bill as a party defendant.

This order to be without prejudice to any proceedings heretofore had in this cause.

Dated October 16, 1919.

ABRA S. VAN VALKENBURGH,
United States District Judge.

At a Court held October 24, 1919:

This cause coming on to be heard on the petition of Federal Land Bank of Wichita, Kansas, intervenor, in this suit, to be made a party defendant herein, on behalf of itself and of the other Federal Land Banks mentioned in the paragraph numbered (2) of the bill of complaint herein and enumerated in the said petition of said Federal Land Bank of Wichita, Kansas, and on the annexed consent of the original parties to said suit, and it appearing to the court that said Federal Land Bank of Wichita, Kansas, has an interest in said suit with respect to which it is entitled to be heard before this court,

It is therefore ordered, adjudged and decreed, That Federal Land Bank of Wichita, Kansas, has leave to intervene in this suit on behalf of itself and of the Federal Land Banks mentioned in said paragraph numbered (2) of the bill of complaint herein and enumerated in said petition, and to that end may appear in said suit within ten (10) days from the date of this order in the same manner and with like effect as if named in the original bill as a party defendant.

This order to be without prejudice to any proceedings heretofore had in this cause.

Dated Kansas City, Mo., October 24th, 1919.

ARBA S. VAN VALKENBURGH,
United States District Judge.

On October 22, 1919, the defendant filed the following motion to dismiss:

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIVISION
OF THE WESTERN DISTRICT OF
MISSOURI.

Charles E. Smith, - - - Plaintiff, }
vs. }
Kansas City Title and Trust Company, - - - Defendant, } and } No. 212
First Joint Stock Land Bank of Chicago, Illinois, - - Intervenor }

MOTION TO DISMISS.

Comes now the Kansas City Title and Trust Company, defendant above named, and respectfully moves the Court to dismiss this action at plaintiff's cost, for the reason that the bill of complaint as amended does not state facts sufficient to constitute a cause of action in equity.

JUSTIN D. BOWERSOCK,
*Solicitor for Kansas City Title and
Trust Company.*

At the conclusion of the oral arguments on the motion to dismiss the Bill in Equity, the Court delivered the following oral opinion.

The Court:

Well, gentlemen, it may, or may not, be known to you, this Court, beginning with next Monday, enters upon one of the most substantial terms of the district, a jury docket extending for weeks, during which time the Court would not be at liberty to consider, nor, in any event, to prepare any written opinion expressive of its views upon, this subject.

It has been made fairly apparent to the Court that it is the desire of counsel that an early decision in this case should be arrived at, to the end, that, as soon as possible, the Supreme Court of the United States may pass upon the ultimate fact, and the Court has been duly advised that, however, this decision may go, that will be the next step, and the final step, in this proceeding.

Of course, a *nisi prius* court, in a case involving great constitutional questions, occupies about the position—a position at least analogous to the platform of a railway coach: Its decision is not for the purpose of standing upon, but for the purpose of getting into the Supreme Court, and, very naturally, that is the ultimate desideratum. We stand, if I may be pardoned the expression, almost in the relationship of caddies to the Supreme Court. We carry the clubs and locate the ball—this in the sense of

simplifying the issue. Then, after they have made their stroke, the matter comes back for us, and we replace the divots.

Under such circumstances and conditions, it seems advisable to me that this case should be now decided. It is a work of supererogation, in the presence of this audience, many of whom have been here throughout the argument, as well as counsel, and members of the bar outside of the counsel in the case, to say that the Court has been favored with the most able and comprehensive of arguments. Cases have been adduced and analyzed with the greatest ability and clearness.

The principles involved are not new. The application is perhaps, as counsel have stated, a new one, but the principles are old; they are old as the Republic. They are old as political parties. They are matters upon which different schools of thought have differed throughout the history of this nation. The school of thought to which I belong, as well as that to which most of those here engaged before the bar of the court are involved, has no doubt whatever about the principles. The question is merely as to the application to a given state of facts.

I am further moved to this expeditious decision of the case; if I may be pardoned for speaking outside of the record in this court room, by the fact that I noted in the noon edition of the daily papers that the counsel in the case were so clear, and presented their argument with such simplicity that even a

schoolboy could fully understand the proceedings—and this is a great compliment to counsel in general. Perhaps there is a boomerang in it to counsel on one side, who have been so earnestly insistent upon something which, as is intimated, even a school boy could readily discern to be otherwise than as contained.

But, at any rate, I have no doubt of the duty of this Court here in the premises. Now as to the Federal Land Banks and their Farm Loan Bonds, I have no question of their validity, in any aspect. The meaning of the power to appropriate money—to levy taxes, which involves ultimate appropriation of money for the general welfare—is not a mere abstraction. When we speak of the appropriation of money—and that right is here conceded—we mean that the money is to be appropriated for some purpose within the power of Congress, some matter that is of flesh and blood, and not mere dry bones. Congress does not appropriate as a vain and empty thing, just for the sake of appropriating, but the appropriation is necessarily linked to and related to the object, and that object is something that comes within the power of Congress under the general welfare clause, so far as we have to deal with it today.

Now it is admitted that the stimulation of agriculture falls within that clause. It is admitted, or at least not denied, that the operation of this law would stimulate agriculture. Now if that is true, then the Congress is empowered at least to enter upon a project of this nature, and having entered upon it, it is

empowered to employ any reasonably apt and appropriate instrumentality to render it effectual. It seems to me that that covers the situation.

I am not insensible of the very able and appealing argument of counsel in the distinction that he has sought to draw. I feel very much in sympathy with him in that respect, because I have occupied that position myself.

I recall I argued once to the Circuit Court of Appeals of this Circuit, at the instance of the Treasury Department, which devises a theory and orders a District Attorney to argue it irrespective of the views of the District Attorney or of the Department of Justice, that in a case of attempted recovery of a claim against the Commissioner of Internal Revenue for war taxes—under the old Spanish War—improperly and illegally collected, sought to be recovered under the Act of March 3rd, 1887, in which he was permitted to sue the Government directly, it was the view of the Treasury Department, as expounded by myself, that this was a tort, or a wrongful act in the execution of the law on the part of the Collector of Internal Revenue, and therefore that the suit could not lie under that particular Act, directly against the Government, unless, of course, it was founded upon an Act of Congress, and I sought, with great learning and ingenuity, to show that a claim of this kind was not founded upon the Act of Congress at all, but merely arose under the Act of Congress, and I told the Circuit Court of Appeals there

was a wide difference between a cause of action founded upon an Act of Congress, and a cause of action arising under an Act of Congress, and when I had completed the argument I thought very well of it myself, but Judge Sanborn, speaking for the Circuit Court of Appeals, said that because it had been insisted upon so earnestly, it had been given great consideration, but he was compelled, in the end, to confess that the distinction was "too subtle and elusive for the density of his understanding."

Now I am unable to distinguish between the right to appropriate for the general welfare, and the resulting right to use any instrumentality that is apt and appropriate, and related to the making of that Act effectual, and what is said about exceeding immediately the powers of Congress the moment the appropriation is made, because if that is so, we stop at the bald appropriation and we are never able to determine and make certain that that appropriation is not in vain, empty, nugatory, and of no effect.

Of course, it is admitted in this connection that the corporation is an appropriate instrument, which admission further approves of the mechanism employed by the Government. We have had all sorts of illustrations in the law and the decisions of the Supreme Court of the cognizance of this principle by that Court. There is the Pure Food Act. There is the Employers Liability Act, to which Justice Hughes referred.

There is the intimation, in the Minnesota Rate Cases, as to the power of Congress once it has entered the field, because when Congress does enter any field, under warrant of authority, it absorbs and appropriates that field so far as may be necessary to carry out the constitutional power of Congress, and it is intimated in the Minnesota Rate Case what may be done there when the Government, through the Interstate Commerce Commission, enters the field, as to intrastate rates as well as interstate rates—the decision in that case being, as I remember it, that Congress had not entered the field in that respect.

So in the case of *Wilson v. New*, which goes perhaps as far as any case possibly could, unless, perhaps, a line of cases that have not been referred to, and those are the cases arising under the Safety Appliance Acts. There the power of the Government attaches to the disjointed instrumentalities of interstate commerce, as evidenced by the rolling stock and appurtenances of the interstate carriers, wherever found, to such an extent that, in so far as the law is applicable, the matter is entirely withdrawn from State cognizance, and is left entirely within the power of Congress and of the Federal Government.

Now as to the Joint Stock Land Banks and their Farm Loan bonds, of course I think all those present will admit that there is a possible line of cleavage between the two. That is to say, it would appear, almost, that you could take some sharp instrument

and cut the Joint Stock Land Banks out of the Act, and that the Federal Land Banks and their bonds, would function just the same. That is, there is no absolute connection, insofar as the system, as a system, is concerned, between the two, but it has been pointed out that these banks are to serve a different class of customers, those who require larger loans; that they have a distinct function to perform, along the same line as the Federal Land Banks.

They are incorporated into the same Act. We can not leave out of mind that one great system is here being created, comprehensive in its nature, containing many parts, and all so interwoven and interrelated that each performs its appointed part in the development and administration of the entire system.

It may be said—perhaps the Supreme Court may say—that they are so far separated from, and not so necessarily connected with the system that they may be taken out, taken apart, and dealt with separately, but certain it is that they are thoroughly germane to the system, and certain it is that they have been dealt with in one comprehensive, systematic plan.

That being so, it does not seem to me, when I take into consideration the fact, also, that they have been, even though arbitrarily, created depositaries of the Government, created as financial agents of the Government, that the arguments against them are so clear and convincing as they must be to warrant a Court of first instance to overcome the presumption

of constitutionality which must prevail, and to declare these Acts unconstitutional, even as to the Joint Stock Land Banks.

I am aware that in a certain very conspicuous instance, the court, in the interest of expedition, has deemed it wise to indulge the presumption of unconstitutionality in the first instance, instead of constitutionality. That is something that I can not bring my mind to accept, and when these banks are thus designated as banks—as depositaries, and as financial agents, why, if the use is conceded in any degree, this Court can not consider the degree of their usefulness in that regard.

It stands there as the deliberate judgment of Congress that they are such, they are adapted to the use—even though their powers may have to be enlarged to make them most useful, they are adapted to the use that Congress has assigned them. That being so, all things considered, and there being no question here, nor can be in this court, as to the wisdom and practicability of this system, then in the absence of any complete unadaptability, the Court must accept their status as declared.

But whatever might be my view on these Joint Stock Banks, certainly the matter must go to the Supreme Court.

Upon one branch of the question, as I say, I am unreservedly without doubt. Upon the other, I may say, also, that I have very little, if any, doubt, although I concede that there is a more debatable ques-

tion there presented, but certainly there ought not to be a division of the questions here involved.

There ought not to be any action taken which would halt a great public enterprise, certainly, as has been pointed out, to the very great disadvantage of its operation, and of the interests of parties who are dealing with it, but the whole question should be passed upon finally, as speedily as possible, and with the least inconvenience to any one concerned, by the Supreme Court, and in view of the considerations that I have just superficially and informally announced, that counsel may know the reasons for my action, the decree will be that the bill be dismissed for want of equity, and an appropriate order may be prepared.

FINAL DECREE.

This cause coming on for hearing this 31st day of October, 1919, the plaintiff appeared by William Marshall Bullitt and Frank Hagerman, his solicitors, the defendant by its solicitor, Justin D. Bowersock, the United States by its solicitor, William G. McAdoo, the intervenors, Federal Land Bank of Wichita, Kansas, by its solicitor, Charles E. Hughes, and First Joint Stock Land Bank of Chicago, Illinois, by its solicitors, William G. McAdoo and George W. Wickersham. By consent of all the parties and by leave of court the bill was amended by interlineation which amendatory matter shall at all times and

under all circumstances be treated as if in the original bill as and when filed. The United States and each of said intervenors, to speed an early disposition of the cause, adopt as their own and were heard upon the motion to dismiss, filed by defendant. Thereupon the Court heard counsel and, being fully advised in the premises, sustained said motion. Plaintiff then electing not to further plead,

IT IS ORDERED, ADJUDGED AND DECREED that the bill (including each intervening petition) be and the same is hereby dismissed.

Plaintiff in open court filed its assignment of errors, presented its appeal bond and prayed an appeal to the Supreme Court of the United States. The said bond is approved and said appeal is granted.

ARBA S. VAN VALKENBURGH,
United States District Judge.

Dated at Kansas City, Missouri, October 31st, 1919.

On October 31, 1919, the plaintiff filed his petition for appeal, assignment of errors, appeal bond and stipulation which are referred to in the above decree and are as follows:

IN THE DISTRICT COURT OF THE UNITED
 STATES FOR THE WESTERN DIVISION
 OF THE WESTERN DISTRICT OF
 MISSOURI.

Charles E. Smith, - - - Plaintiff,

vs.

Kansas City Title and Trust
 Company, - - - Defendant, No. 212
 Federal Land Bank of Wichita,
 Kansas,
 and
 First Joint Stock Land Bank
 of Chicago, Illinois, - - Intervenors

PETITION FOR APPEAL.

Now comes the plaintiff and prays for an appeal to the Supreme Court of the United States from the decree this day entered herein, its assignments of error being hereto attached and made part hereof.

WM. MARSHALL BULLITT,
FRANK HAGEMAN,
Solicitors for Plaintiff.

ASSIGNMENTS OF ERROR.

This Court erred in:

1. In decreeing a dismissal of the bill.
2. In holding to be valid and constitutional each of the Acts of Congress of July 17, 1916, and January 18, 1918, mentioned in the bill.
3. In holding to be valid and constitutional each of the sections 21, 26 and 27 of said Act of July 17, 1916.
4. In holding that defendant can lawfully invest in and purchase Federal Land Bank bonds.
5. In holding that the defendant can lawfully invest in and purchase Joint Stock Land Bank bonds.

WM. MARSHALL BULLITT,

FRANK HAGEMAN,

Solicitors for Plaintiff.

Issue and service of a citation herein waived. Appearance in the Supreme Court hereby entered. Consent given to the docketing of the appeal as one cause and to the advancement of the cause for hearing at the earliest practicable date.

It is stipulated that, upon any appeal by any party to the Supreme Court of the United States from the final decree herein, the record shall consist of the following papers and no others:

1. Bill in Equity, as amended.
2. Motion to dismiss, and orders of intervention.

3. Final decree, and opinion of District Court.

4. Petition for appeal, assignment of error, and this stipulation.

It is stipulated that by proper proceedings, the Federal Land Bank of Wichita, Kansas, and the First Joint Stock Land Bank of Chicago, Illinois, intervened and were made parties defendant, and that the United States was heard *Amicus Curiae*.

ATTORNEY GENERAL,
By W. G. McADOO,
Special Assistant for U. S.
JUSTIN D. BOWERSOCK,
Solicitor for Defendant.
CHARLES E. HUGHES,
*Solicitor for Intervenor
Federal Land Bank of
Wichita, Kansas.*

W. G. McADOO,
GEO. W. WICKERSHAM,
*Solicitors for Intervenor
First Joint Stock Land
Bank of Chicago, Illinois.*

WM. MARSHALL BULLITT,
FRANK HAGEMAN,
Counsel for Plaintiff.

Allowed this October 31, 1919.

ARBA S. VAN VALKENBURGH,
Judge.

United States of America, Set.

Know all men by these presents, That we, Charles E. Smith are held and firmly bound unto Kansas City Title & Trust Co., United States of America, Federal Land Bank of Wichita, Kansas, and First Joint Stock Land Bank of Chicago, Illinois, in the full sum of two hundred and fifty dollars to be paid to the said obligees there heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seal, and dated this 31 day of October, in the year of our Lord, one thousand nine hundred and nineteen.

Whereas, lately at the April term of the District Court of the United States for the Western Division of the Western District of Missouri, in a suit depending in said court between Charles E. Smith, plaintiff, and Kansas City Title & Trust Company, *et al.*, intervenors and defendant, a decree was rendered against the said plaintiff and the said plaintiff has obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said defendants and intervenors citing and admonishing them to be and appear in the United States Supreme Court, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said appellant shall prosecute said appeal to effect, and answer all damages and costs if appellant fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Signed and sealed in presence of

CHARLES E. SMITH,

By Wm. MARSHALL BULLITT [SEAL.]

FRANK HAGERMAN [SEAL.]

His Attorneys

FRANK HAGERMAN [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

ARBA S. VAN VALKENBURGH,
Judge.

United States of America, set.:

I, EDWIN R. DURHAM, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignment of errors, and all proceedings in the cause wherein Charles E. Smith is plaintiff and Kansas City Title and Trust Company is defendant, No. 212 in Equity, as fully as the same appear on file and of record in my said office, in accordance with stipulation filed herein and made a part hereof.

EDWIN R. DURHAM,
Clerk U. S. District Court.



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U.S. GOVERNMENT

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1919.

CHARLES E. SMITH, - - - - - *Appellant,*
v.s.
KANSAS CITY TITLE AND TRUST
COMPANY, ETC., - - - - - *Appellees.*

Appeal from the District Court of the United States, for
the Western Division of the Western District
of Missouri.

MOTION TO ADVANCE.

The appellant, CHARLES E. SMITH, moves that
this cause be advanced for hearing at an early date, for
the following reasons, to-wit:

(1) The sole question involved is the constitutionality
of the Federal Farm Loan Act of July 17th, 1916 (39
Stat. 360) as amended January 18, 1918.

(2) Bonds have been and are being issued pursuant
to the provisions of the Act, and the real question at
issue is whether or not they are exempt from all State
and Federal Taxation.

(3) This case is of great public interest to the Federal
Farm Loan Board, to the many Federal Land Banks and
Joint Stock Banks, and to the investors and borrowers of
the country, and an early hearing is very desirable.

**WM. MARSHALL BULLITT,
FRANK HAGERMAN,**

Counsel for Appellant.

We concur in the above,

CHARLES E. HUGHES,

Counsel for Federal Land Bank, of Wichita, Kansas.

WILLIAM G. McADOO,

GEORGE W. WICKERSHAM,

*Counsel for First Joint Stock Land Bank of Chicago,
Illinois.*

WILLIAM G. McADOO,

*Special Assistant to the Attorney General, for the
United States as Amicus Curiae.*

I concur in the above,

JUSTIN D. BOWERSOCK,

Counsel for Kansas City Title & Trust Co.